



General Assembly

Substitute Bill No. 5249

January Session, 2009

* HB05249LAB 031209 *

AN ACT CONCERNING TIMELY MEDICAL TREATMENT FOR INJURED WORKERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-294d of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) (1) The employer, as soon as the employer has knowledge of an
4 injury, shall provide a competent physician or surgeon to attend the
5 injured employee and, in addition, shall furnish any medical and
6 surgical aid or hospital and nursing service, including medical
7 rehabilitation services and prescription drugs, as the physician or
8 surgeon deems reasonable or necessary. The employer, any insurer
9 acting on behalf of the employer, or any other entity acting on behalf of
10 the employer or insurer shall be responsible for paying the cost of such
11 prescription drugs directly to the provider.

12 (2) If the injured employee is a local or state police officer, state
13 marshal, judicial marshal, correction officer, emergency medical
14 technician, paramedic, ambulance driver, firefighter, or active member
15 of a volunteer fire company or fire department engaged in volunteer
16 duties, who has been exposed in the line of duty to blood or bodily
17 fluids that may carry blood-borne disease, the medical and surgical aid
18 or hospital and nursing service provided by the employer shall include
19 any relevant diagnostic and prophylactic procedure for and treatment

20 of any blood-borne disease.

21 (b) The employee shall select the physician or surgeon from an
22 approved list of physicians and surgeons prepared by the chairman of
23 the Workers' Compensation Commission. If the employee is unable to
24 make the selection, the employer shall do so, subject to ratification by
25 the employee or his next of kin. If the employer has a full-time staff
26 physician or if a physician is available on call, the initial treatment
27 required immediately following the injury may be rendered by that
28 physician, but the employee may thereafter select his own physician as
29 provided by this chapter for any further treatment without prior
30 approval of the commissioner.

31 (c) The commissioner may, without hearing, at the request of the
32 employer or the injured employee, when good reason exists, or on his
33 own motion, authorize or direct a change of physician or surgeon or
34 hospital or nursing service provided pursuant to subsection (a) of this
35 section.

36 (d) The pecuniary liability of the employer for the medical and
37 surgical service required by this section shall be limited to the charges
38 that prevail in the same community or similar communities for similar
39 treatment of injured persons of a like standard of living when the
40 similar treatment is paid for by the injured person. The liability of the
41 employer for hospital service shall be the amount it actually costs the
42 hospital to render the service, as determined by the commissioner,
43 except in the case of state humane institutions, the liability of the
44 employer shall be the per capita cost as determined by the Comptroller
45 under the provisions of section 17b-223. All disputes concerning
46 liability for hospital services in workers' compensation cases shall be
47 settled by the commissioner in accordance with this chapter.

48 (e) If the employer fails to promptly provide a physician or surgeon
49 or any medical and surgical aid or hospital and nursing service as
50 required by this section, the injured employee may obtain a physician
51 or surgeon, selected from the approved list prepared by the chairman,

52 or such medical and surgical aid or hospital and nursing service at the
53 expense of the employer.

54 (f) If an employer has good cause to believe that proposed treatment
55 recommended by (1) a medical provider participating in an employer
56 medical care plan approved pursuant to the provisions of section 31-
57 279, as amended by this act; (2) a physician identified in an approved
58 voluntary agreement pursuant to section 31-296; or (3) a provider to
59 whom the employee has been referred by such physician or medical
60 provider for treatment, is unreasonable or unnecessary, the employer
61 shall promptly issue a written notice to the employee and employee's
62 representative, if any, indicating the medical evidence upon which it
63 relies for concluding that the proposed treatment is either unnecessary
64 or unreasonable. If the employer wishes to support its denial of such
65 treatment by a medical examination, the employer shall, after receipt
66 of the recommendation of the proposed treatment from such medical
67 provider or physician, schedule such medical examination in
68 accordance with the provisions of this subsection and subsection (a) of
69 section 31-294f, as amended by this act, to occur within thirty days.
70 The employee shall attend this scheduled medical examination or
71 provide written notice of the employee's need for the employer to
72 reschedule said examination within an additional thirty-day period.

73 (g) Whenever an examination requested by the employer pursuant
74 to subsection (f) of this section results in concurrence that the proposed
75 treatment recommended by a medical provider or physician described
76 in subdivisions (1) to (3), inclusive, of subsection (f) of this section was
77 reasonable and necessary, the employer shall pay the employee for the
78 period the employee's treatment was delayed by the employer,
79 provided the employee is otherwise eligible for benefits for total or
80 partial incapacity: (1) For total incapacity, one hundred per cent of the
81 employee's average weekly earnings, calculated pursuant to section 31-
82 310, subject to the reductions to such earnings specified in subsection
83 (a) of section 31-307; or (2) for partial incapacity, one hundred per cent
84 of the difference in wages described in subsection (a) of section 31-308,

85 subject to the reductions to such wages specified in said subsection (a).
86 If an employer fails to schedule a medical examination pursuant to the
87 provisions of subsection (f) of this section, the employee, in any
88 proceeding resulting in authorization of such treatment, may recover
89 reasonable attorney's fees arising out of the employee's claim for the
90 recommended treatment.

91 Sec. 2. Section 31-294f of the general statutes is repealed and the
92 following is substituted in lieu thereof (*Effective October 1, 2009*):

93 (a) An injured employee shall submit himself to examination by a
94 reputable practicing physician or surgeon, at any time while claiming
95 or receiving compensation, upon the reasonable request of the
96 employer or at the direction of the commissioner. The examination
97 shall be performed to determine the nature of the injury and the
98 incapacity resulting from the injury. The physician or surgeon shall be
99 selected by the employer from an approved list of physicians and
100 surgeons prepared by the chairman of the Workers' Compensation
101 Commission and shall be paid by the employer. At any examination
102 requested by the employer or directed by the commissioner under this
103 section, the injured employee shall be allowed to have in attendance
104 any reputable practicing physician or surgeon that the employee
105 obtains and pays for himself or to record such examination by way of
106 any medium which creates an audio or video recording. The employee
107 shall submit to all other physical examinations as required by this
108 chapter. The refusal of an injured employee to submit himself to a
109 reasonable examination under this section shall suspend his right to
110 compensation during such refusal.

111 (b) All medical reports concerning any injury of an employee
112 sustained in the course of his employment shall be furnished within
113 thirty days after the completion of the reports, at the same time and in
114 the same manner, to the employer and the employee or his attorney.

115 Sec. 3. Subsection (b) of section 31-288 of the general statutes is
116 repealed and the following is substituted in lieu thereof (*Effective*

117 October 1, 2009):

118 (b) (1) Whenever through the fault or neglect of an employer or
119 insurer, the adjustment or payment of compensation due under this
120 chapter or the provision of reasonable and necessary medical
121 treatment is unduly delayed, such employer or insurer may be
122 assessed by the commissioner hearing the claim a civil penalty of not
123 more than one thousand dollars for each such case of delay, to be paid
124 to the claimant. For purposes of this subsection, the failure to promptly
125 provide medical services recommended by (A) a medical provider
126 participating in an employer medical care plan approved pursuant to
127 the provisions of section 31-279, as amended by this act; (B) a physician
128 identified in an approved voluntary agreement pursuant to section 31-
129 296; or (C) a provider to whom the employee has been referred by such
130 medical provider or physician for recommended treatment, shall be
131 presumed to be the unreasonable delay of treatment without good
132 cause unless the commissioner finds the recommended medical care
133 was either unreasonable or unnecessary at the time such care was
134 recommended. (2) Whenever either party to a claim under this chapter
135 has unreasonably, and without good cause, delayed the completion of
136 the hearings on such claim, the delaying party or parties may be
137 assessed a civil penalty of not more than five hundred dollars by the
138 commissioner hearing the claim for each such case of delay. Any
139 appeal of a penalty assessed pursuant to this subsection shall be taken
140 in accordance with the provisions of section 31-301.

141 Sec. 4. Section 31-279 of the general statutes is amended by adding
142 subsection (f) as follows: (*Effective October 1, 2009*):

143 (NEW) (f) The Worker's Compensation Commission shall have
144 plenary review of decisions with respect to the provision or denial of
145 medical care under any plan approved by the chairman under
146 subsection (d) of this section and may determine whether such medical
147 care is reasonable or necessary.

148 Sec. 5. Section 31-300 of the general statutes is repealed and the

149 following is substituted in lieu thereof (*Effective October 1, 2009*):

150 As soon as may be after the conclusion of any hearing, but no later
151 than one hundred twenty days after such conclusion, the
152 commissioner shall send to each party a written copy of the
153 commissioner's findings and award. The commissioner shall, as part of
154 the written award, inform the employee or the employee's dependent,
155 as the case may be, of any rights the individual may have to an annual
156 cost-of-living adjustment or to participate in a rehabilitation program
157 under the provisions of this chapter. The commissioner shall retain the
158 original findings and award in said commissioner's office. If no appeal
159 from the decision is taken by either party within twenty days
160 thereafter, such award shall be final and may be enforced in the same
161 manner as a judgment of the Superior Court. The court may issue
162 execution upon any uncontested or final award of a commissioner in
163 the same manner as in cases of judgments rendered in the Superior
164 Court; and, upon the filing of an application to the court for an
165 execution, the commissioner in whose office the award is on file shall,
166 upon the request of the clerk of said court, send to the clerk a certified
167 copy of such findings and award. In cases where, through the fault or
168 neglect of the employer or insurer, medical treatment or adjustments
169 of compensation have been unduly delayed, or where through such
170 fault or neglect, payments have been unduly delayed, the
171 commissioner may include in the award interest at the rate prescribed
172 in section 37-3a and a reasonable attorney's fee in the case of undue
173 delay in medical treatment or adjustments of compensation and may
174 include in the award in the case of undue delay in payments of
175 compensation, interest at twelve per cent per annum and a reasonable
176 attorney's fee. Payments not commenced within thirty-five days after
177 the filing of a written notice of claim shall be presumed to be unduly
178 delayed unless a notice to contest the claim is filed in accordance with
179 section 31-297. In cases where there has been delay in either
180 adjustment or payment, which delay has not been due to the fault or
181 neglect of the employer or insurer, whether such delay was caused by
182 appeals or otherwise, the commissioner may allow interest at such

183 rate, not to exceed the rate prescribed in section 37-3a, as may be fair
184 and reasonable, taking into account whatever advantage the employer
185 or insurer, as the case may be, may have had from the use of the
186 money, the burden of showing that the rate in such case should be less
187 than the rate prescribed in section 37-3a to be upon the employer or
188 insurer. In cases where the claimant prevails and the commissioner
189 finds that the employer or insurer has unreasonably contested liability,
190 the commissioner may allow to the claimant a reasonable attorney's
191 fee. No employer or insurer shall discontinue or reduce payment on
192 account of total or partial incapacity under any such award, if it is
193 claimed by or on behalf of the injured person that such person's
194 incapacity still continues, unless such employer or insurer notifies the
195 commissioner and the employee of such proposed discontinuance or
196 reduction in the manner prescribed in section 31-296 and the
197 commissioner specifically approves such discontinuance or reduction
198 in writing. The commissioner shall render the decision within fourteen
199 days of receipt of such notice and shall forward to all parties to the
200 claim a copy of the decision not later than seven days after the decision
201 has been rendered. If the decision of the commissioner finds for the
202 employer or insurer, the injured person shall return any wrongful
203 payments received from the day designated by the commissioner as
204 the effective date for the discontinuance or reduction of benefits. Any
205 employee whose benefits for total incapacity are discontinued under
206 the provisions of this section and who is entitled to receive benefits for
207 partial incapacity as a result of an award, shall receive those benefits
208 commencing the day following the designated effective date for the
209 discontinuance of benefits for total incapacity. In any case where the
210 commissioner finds that the employer or insurer has discontinued or
211 reduced any such payment without having given such notice and
212 without the commissioner having approved such discontinuance or
213 reduction in writing, the commissioner shall allow the claimant a
214 reasonable attorney's fee together with interest at the rate prescribed in
215 section 37-3a on the discontinued or reduced payments.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2009</i>	31-294d
Sec. 2	<i>October 1, 2009</i>	31-294f
Sec. 3	<i>October 1, 2009</i>	31-288(b)
Sec. 4	<i>October 1, 2009</i>	31-279
Sec. 5	<i>October 1, 2009</i>	31-300

LAB *Joint Favorable Subst.*